



There are three foundational prerequisites to demonstrate organizational compliance with the HCBS settings requirements. You must

- 1) have a rights policy that specifically details the HCBS rights afforded to individuals receiving Medicaid HCBS;
- 2) the HCBS rights policy includes a requirement for the annual disclosure of HCBS rights to individuals/families; and
- 3) there is a policy, or incorporation into an existing policy, a requirement for annual staff training on HCBS rights and expectations.

Provided are three sample HCBS rights policies (one for day settings and two for residential settings) and a rights disclosure statement template. You can use these samples to develop your policy. When doing so, your HCBS rights policy should be a formalized policy specific to your organization and not a copy and paste of the policy template.



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Home and Community Based Services Rights	July 1, 2018

General Rights

The Developmental Disabilities (DD) Waiver Home and Community-Based Services (HCBS) Waivers provide Virginians eligible for DD Waiver services the choice to receive services and supports in the community versus an institutional setting. Per federal regulations (42 CFR 441.301), individuals enrolled in long-term services and supports waivers are permitted specific rights. For individuals receiving DD Waiver (group day and/or group supported employment) services, the setting must:

- Be integrated in and supports full access to the greater community.
- Ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimize, but not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- Facilitate individual choice regarding services and supports, and who provides them.

Expectations for Person-Centered Individual Support Plans

In addition, Person Centered Individual Support Plans (PCISP) for individuals must reflect the services and supports that are important for the individuals' identified needs and preferences. An individual's written PCISP must:

- Reflect that the setting was the individual's choice and is integrated in, and supportive of full access of the individual to the greater community.
- Reflect the individual's strengths and preferences.
- Reflect clinical and support needs that have been identified through a functional needs assessment.
- Includes individually identified desired outcomes and support activities.
- Reflect the (paid/unpaid) services/supports, and providers of such services/supports that will assist the individual to achieve identified goals.
- Reflect risk assessment, mitigation, and backup planning.
- Be understandable (e.g. linguistically, culturally, and disability considerate) to both the individual receiving HCBS and the individual's support system.
- Identify the individual and/or entity responsible for monitoring the PCSP.
- With the written, informed consent of the individual, be finalized, agreed to, and signed by all individuals/providers responsible for implementation of the PCSP.
- Be distributed to the individual and others involved in the PCSP.
- Prevent service duplication and/or the provision of unnecessary services/supports.



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It is the policy of HCBS Group Day Services, Inc. that individuals receiving services are notified of their HCBS rights annually. These rights will be reviewed in a manner meaningful to the individual. Disclosure of these rights will be documented and include a signature and date.



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General Rights

The Developmental Disabilities (DD) Waiver Home and Community-Based Services (HCBS) Waivers provide Virginians eligible for DD Waiver services the choice to receive services and supports in the community versus an institutional setting. Per federal regulations (42 CFR 441.301), individuals enrolled in long-term services and supports waivers are permitted specific rights. For individuals receiving DD Waiver (group home, sponsored residential or supported living) services, the setting must:

- Be integrated in and supports full access to the greater community.
- Ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
- Optimize, but not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- Facilitate individual choice regarding services and supports, and who provides them.

In addition to the rights and qualities specified above, in the home where HCBS services are provided the following conditions will be met:

1. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of Virginia. For settings in which landlord tenant laws do not apply, there will be a lease, residency agreement or other form of written agreement in place for each HCBS participant, and the document provides protections that address eviction processes and appeals comparable to those provided under the landlord tenant law.

2. Each individual has privacy in their sleeping or living unit:

- Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
- Individuals sharing units have a choice of roommates in that setting.
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

3. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

4. Individuals are able to have visitors of their choosing at any time.



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5. The setting is physically accessible to the individual

6. Any modification of the additional conditions specified in items 1 through 4 above, must be supported by a specific individually-assessed need and justified in the person-centered individual support plan. The following requirements must be documented in the person-centered individual support plan:

- Identify a specific and individualized assessed need.
- Document the positive interventions and supports used prior to any modifications to the person-centered individual support plan.
- Document less intrusive methods of meeting the need that have been tried but did not work.
- Include a clear description of the condition that is directly proportionate to the specific assessed need.
- Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Include the informed consent of the individual.
- Include an assurance that interventions and supports will cause no harm to the individual.

Expectations for Person-Centered Individual Support Plans

In addition, Person Centered Individual Support Plans (PCISP) must reflect the services and supports that are important for the individuals' identified needs and preferences. An individual's written PCISP must:

- Reflect that the setting was the individual's choice and is integrated in, and supportive of full access of the individual to the greater community.
- Reflect the individual's strengths and preferences.
- Reflect clinical and support needs that have been identified through a functional needs assessment.
- Includes individually identified desired outcomes and support activities.
- Reflect the (paid/unpaid) services/supports, and providers of such services/supports that will assist the individual to achieve identified goals.
- Reflect risk assessment, mitigation, and backup planning.
- Be understandable (e.g. linguistically, culturally, and disability considerate) to both the individual receiving HCBS and the individual's support system.
- Identify the individual and/or entity responsible for monitoring the PCISP.



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- With the written, informed consent of the individual, be finalized, agreed to, and signed by all individuals/providers responsible for implementation of the PCISP.
- Be distributed to the individual and others involved in the PCISP.
- Include services that afford the individual the option to self-direct.
- Prevent service duplication and/or the provision of unnecessary services/supports.

It is the policy of HCBS Group Home Residential Services, Inc. that individuals receiving services are notified of their HCBS rights annually. These rights will be reviewed in a manner meaningful to the individual. Disclosure of these rights will be documented and include a signature and date.



XYZ Residential Services Provider
HCBS Rights Policy
Effective Date: 7/16/2018

Purpose: To articulate those rights expressly guaranteed by 42CFR 441.301 for all who receive Home and Community Based Services. To communicate the methods and procedures for ensuring that all staff are trained in these rights, that their practice is an expected component of staff performance, and how individuals will be informed of these rights.

The setting shall:

- Be integrated in and support full access to the greater community including:
 - opportunities to engage in community life,
 - control personal resources,
 - receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.
- Ensure and individual's right to privacy, dignity, and respect, freedom from coercion and restraint.
- Optimize, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
- Facilitate individual choice regarding services and supports, and who provides them.

It shall also:

1. Have "units" which are rented or occupied under a legally enforceable agreement by the individual who has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law, 55.248.2 of the Code of Virginia.
2. Support the individual's privacy in their sleeping or living unit:
 - a. Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
 - b. Individuals sharing units have a choice of roommates
 - c. Individuals have the freedom to furnish and decorate their sleeping or living units within the terms of their lease
3. Support the individual's freedom to control their own schedules and activities, and have access to food at any time.
4. Support individuals to have visitors of their choosing at any time
5. Be physically accessible to the individual

Any modification of the requirements specified in items 1 through 4 above, must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:



- Identify a specific and individualized assessed need.
- Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
- Document less intrusive methods of meeting the need that have been tried but did not work.
- Include a clear description of the condition that is directly proportionate to the specific assessed need.
- Regular collection and review of data to measure the ongoing effectiveness of the modification.
- Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Informed consent of the individual.
- Include an assurance that interventions and supports will cause no harm to the individual.

Staff Training:

- All staff will be trained on these rights in conjunction with the mandated training required by 12VAC35-115; questions concerning these rights will be included in the objective written test administered during initial staff in-services and annually following the annual retraining on such subjects as human rights/HCBS rights, safety, medication administration, etc.
- Elements of the listed “rights” and practices for implementation are included, as appropriate, in both the position descriptions and the performance evaluations to emphasize the importance of these specific rights.

Communication:

- 12VAC35-115-40 describes how a licensed provider is required to assure the rights as described in 37.2-400 of the Code of Virginia; the rights articulated above in this policy will be communicated in a like manner.



**Disclosure of Rights and Required Practices for
Individuals Receiving Medicaid HCBS Waiver Supports**

I hereby acknowledge that on _____, _____
(Date) (Provider Name)

shared information with me about the Medicaid Home and Community Based Services (HCBS) settings requirements and my rights as an individual receiving Medicaid HCBS.

Individual

Date

Family/Representative

Date

Provider Representative

Date

Disclosure of HCBS Rights will be completed annually

If you feel that your HCBS rights have been violated contact your Human Rights Advocate

_____ at _____
Name Phone Number

Name

Medicaid Number